

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA S. LUCAS

Claimant

VS.

SHAWNEE MISSION MEDICAL CENTER

Respondent

Self Insured

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Docket No. 244,423

ORDER

Respondent requested review of the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on July 28, 1999.

ISSUES

The issues for Appeals Board review are:

1. Whether claimant sustained injury by accident that arose out of and in the course of her employment with respondent.
2. Whether claimant provided respondent with timely notice of accidental injury.¹
3. Whether timely written claim was made.²

FINDINGS OF FACT

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

1. Claimant began working for respondent in September of 1991 as a nursing assistant. She had been a nurse on the orthopaedic floor since June of 1993. Part of her job duties with respondent involved patient care. This included bathing patients, lifting patients, and assisting patients with ambulation.

¹ K.S.A. 44-520.

² K.S.A. 44-520a.

2. Claimant described having problems with back pain in March of 1998. She did not attribute this pain solely to her work with respondent but noticed it in particular during her work activities, more so towards the end of her work day. She first sought treatment on March 25, 1998. From March through August she continued with her regular job duties. She testified that during this period she became worse. Although she attributed this pain in part to the work she was doing for respondent, claimant also testified that she considered it to be the result of age or "life."

3. She was first given work restrictions in September 1998 after an MRI showed a disc herniation at L5-S1. She then performed light duty work until she was terminated on December 31, 1998, when respondent said it would no longer accommodate her restrictions.

CONCLUSIONS OF LAW

Respondent contends claimant failed to provide timely notice of her accidental injury. K.S.A. 44-520 requires notice of accidental injury be given to the employer within 10 days. The time for giving notice can be extended up to 75 days for just cause. Just cause is not the issue here.

In another case, the Board said:

When dealing with injuries that are caused by overuse or repetitive micro-trauma, it can be difficult to determine the injury's cause. It is also often difficult to determine the injury's date of commencement and conclusion. In those situations, injured workers should not be held to absolute precision when considering the requirements of notice and written claim. The test should be whether the employer was placed on reasonable notice of a work-related injury.³

Respondent contends claimant knew she was injured but never attributed her injury to her work and never gave notice. Claimant counters that she was able to continue working and did not know the precise cause for her pain or the severity of her injury until she saw the doctor. In addition, claimant's uncontradicted testimony is that she informed her supervisor Tandy Gabbert that she thought her back condition may be a workers compensation injury.

I called her and I was concerned about my situation because I felt that I didn't know what to do. I had been hurting real bad and I couldn't pinpoint -- I told her I couldn't pinpoint a specific thing that I did or a specific time that I hurt it while I was at work. All I knew by the end of the day I hurt so bad I could hardly walk out of there. Someone even offered to wheel me out to my car in a wheelchair. And I asked her, you know, if I could -- "Is this something that I could file under work comp," and she said she didn't know, that she would call me back, and she called me back pretty soon and she said that she talked to somebody and since -- it would be hard for it to be accepted as a work comp because I

³ Pope v. Overnite Transportation Company, WCAB Docket No. 237,559 (June 1999).

couldn't pinpoint it to a specific injury or a specific thing that caused the injury.⁴

This conversation did in fact lead to an investigation by respondent's Risk Manager, the person responsible for handling workers compensation claims.

Claimant's testimony is that she did not suffer a specific traumatic event, but that instead her condition progressively worsened until she was no longer able to perform her regular job and, although she attributed her condition to work, she was not sure whether she had suffered an accident under workers compensation. The Appeals Board finds claimant's conversation with Tandy Gabbert in late March or early April of 1998 satisfied the requirement to report her injury within 10 days. The Appeals Board also finds that it is more probably true than not that claimant suffered a series of accidental injuries or aggravations. Although claimant alleges accident through December 31, 1998, there is insufficient evidence of aggravation while claimant was on light duty restrictions. Therefore, the date of accident for determining the timeliness of the notice and written claim is September 2, 1998, the last day claimant worked her regular job.⁵ Based upon that accident date, claimant has not satisfied the 200 day written claim limit in K.S.A. 44-520a because her written claim was not served until May 12, 1999. But the record does not reflect that respondent filed a report of accident with the division of Workers Compensation. This extends the time for giving written claim under K.S.A. 44-557(c) to one year.

The Appeals Board finds claimant has proven a work-related injury from a series of mini-traumas beginning approximately March 1998 and continuing each and every working day up through her last day of regular duty work on or about September 2, 1998.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 28, 1999 Order entered by Administrative Law Judge Steven J. Howard should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Timothy E. Power, Overland Park, KS
H. Wayne Powers, Overland Park, KS
Steven J. Howard, Administrative Law Judge

⁴ Preliminary Hearing Transcript, pgs. 14 and 15.

⁵ Treaster v. Dillon Companies, Inc., Docket No. 80,830 (Kan. 1999).

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Philip S. Harness, Director